

HUMAN RIGHTS OF WOMEN AND CHILDREN UNDER ISLAMIC LAW

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**Presented at International Conference on
Islamic Family Law and Muslim Minorities
Organized by Al-Furqan Foundation, Tamale, Ghana
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Bismillahir-Rahamanir-Rahim

Praise be to Allah who has made for men wives and from the wives, He has made children and grandchildren. May Allah's peace be upon His most chosen Prophet, Muhammad, his Companions and his family and those who follow his footsteps up to the Day of Judgment.

Women and children are the cream of the society because the continuity of the human species depends on procreating the children and it is the women who do this. This is what the Creator Himself says, in his Glorious Book, the Qur'an 16:72 which reads:

And God has given you mates (wives) of your own kind and has given you, through your mates (wives) children and children's children and h

That is why the protection of the as provided for you sustenance out of the good things for life...¹

rights of women became vital under the Shari'ah, because neglecting their rights has serious negative effects on the family and by extension to the whole society since family is the foundation of building the society. These rights have extensively been explained under the Shari'ah to the extent that whatever is capable of protecting them has been provided.

However, these rights are often violated or at least neglected due to ignorance of the Muslims about them which lead some or many Muslims to justify the violation of many of the rights by religiously flavoured argument and the assumption that the cultural practices which are usually used in the violation of the rights are correct and even endorsed by the Shari'ah.

Another reason is the intrusion of the foreign systems, e.g. various International Treaties, Conventions and Protocols, such as the U.N. Conventions and Protocols on the rights of children and women, which are capable of destabilizing the family.

The aim of this paper is to focus on the ideal or normative relating to rights of women and children under the Shari'ah with the hope that it

will shade some lights on these rights which will be the initial state of having correct conception of the rights in our time, when Muslims themselves are confused regarding them.

And in the end it will be seen that the Shari'ah which is a divine way of life has evolved a system which has been proved to be the most effective in observing and protecting women's and children's rights, in particular and human rights, in general.

1. The Concept of Human Rights Under the Shari'ah

To have proper understanding of the concept of human rights, from the perspective of the Shari'ah, one must understand the system and objectives of the Shari'ah itself. And this is not possible unless the mission of man on earth, namely vicegerancy which has been explained clearly in the Qur'anic verse 2: 20-39, is clearly understood. The nature of this vicegerancy has been categorically explained by Allah (S.W.T.) in the Qur'an 6:162-163 which reads:

Say (O Muhammad (S.A.W)) "Verily, my *salat* (prayer), my sacrifice, my living and my dying are for Allah, the Lord of the "*Alamin* (mankind, jinn and all that exists). He has no partner. And of this I have been commanded, and I am the first of the Muslims."²

This Qur'anic provision clearly indicates that the purpose of man's existence on the earth is to serve his Creator Allah (S.W.T). This may apparently seem to mean that man has no right but only duties and obligations. To clarify this possible misconception A.K. Brohi has this to say:

Since within the totality of Islam man's duty to God embraces both his duty to society and to every other individual paradoxically, the rights of each are protected by the obligations of all under Divine Law. As the state itself is equally subject to this same law, it too is compelled to protect the rights of individual.³

Revelations containing the rights were conveyed to humanity right from the first human being (Adam (A.S.) who was himself one of the Messengers of Allah up to the last Prophet Muhammad (SA.W). This clearly shows that from the Shari'ah point of view, the concept of human rights is not the result of any evolution in human thought but the result of divine revelations conveyed through the messengers of Allah right from the very beginning of human existence on this earth.⁴ On this concept Abu A'ala Maududi has this to say:

Since in Islam rights have been conferred by God, no legislative assembly in the world, or any government on earth has the right or authority to make any amendment or change in the rights conferred by God. Nor one has the right to abrogate them, or withdraw them. No are they the basic human rights, which are conferred on paper for the sake of show and exhibition and denied in actual life when the show is over. Nor are they like philosophical concepts, which have no sanction behind them.⁵

He goes on to say that no Charter, Proclamations, Resolutions or Conventions of the United Nations can be compared with these rights, which have been sanctioned by Allah (S.W.T.), a fact that has made them to be part and parcel of *iman* (Islamic faith). He then concludes thus:

Every Muslim or administrator who claim themselves to be Muslims, will have to accept, recognize and enforce them. If they fail to enforce them, and start denying the right that have been guaranteed by God and make amendments and changes in them, or practically violate them while paying lip service to them, the verdict of the Holy Qur'an for such government is clear and unequivocal.⁶

He quotes a part of 5:44 which reads, "... Those who do not judge by what God has sent down are the disbelievers (*al-Kafirun*)", a part of 5:45 which reads, "... Those who do not judge by what God has sent down are the wrong-doers (*az-Zalimum*)" and part of 5:47 which reads, "... Those who do not judge by what God has sent down are perverse and law-breakers (*al-Fasiqun*)."⁷ and relates them to this.

These rights then are permanent, perpetual and eternal and are not subject to any alterations or modifications and there is no scope for any change or abrogation.

Human Rights Under the *Shari'ah*

Human rights, under the *Shari'ah* are of two kinds:

- a) those rights which can be enforced by the Islamic state; these are called legal rights; and
- b) those that cannot directly be enforced by the Islamic state.

These two types of rights differ only in terms of accountability before the state otherwise they do not differ in their origin, nature and accountability before Allah (S.W.T). Legal rights are further subdivided into two:

- (i) The basic human rights that the *Shari'ah* confers on every man and woman as human beings;
- (ii) Special rights conferred upon different classes of people in accordance with their peculiar conditions, status and the position they have.

This paper deals with the basic human rights and the special rights in relation to women and children starting with their basic human rights.

2.1 Basic Human Rights of Women and Children

Since women and children are human beings, they are entitled to these basic rights to which every other human being is entitled. The detailed exposition of these rights are as follows:

2.1.1. Right to Life

This is the most important of these basic human rights. Thus every human being, including women and children, must be allowed to live and his or her life must be respected and protected. There are several authorities in both the Qur'an and the Sunnah to that effect. Some of these authorities include:

(a) and (b) Qur'an, 17:34 and 6:152 which provide that:

And slay not the life, which Allah hath forbidden save with right...⁸

(c) Qur'an 5:32 which provides

‘... If anyone slays a human being – unless it be (in punishment) for murder or for spreading corruption on earth – it shall be as though he had slain all mankind; whereas, if any one saves a life, it shall be as through he had saved the lives of all mankind

(d) Qur'an 6:151

... Kill not your children because of poverty – We provide sustenance for you and for them...¹⁰

(e) Qur'an 17:31

And do not kill your children for fear of poverty. We shall provide for them as well as for you. Surely the killing of them is a great sin.¹¹

(f) The Prophet (S.A.W) declared in his famous sermon at Arafat, on the occasion of his Farwell Hajj, “Behold! Your lives and your possessions shall be inviolable among you as the sacred inviolability of this day (of Hajj)...¹²

(g) The Prophet (SAW) was reported to have said, “One who kills a man under covenant (i.e. a non-Muslim citizen of an Islamic state) will not smell even the fragrance of the Paradise.¹³

- (h) A Muslim killed a *zimmi* (i.e. a non-Muslim living in Islamic state) during the lifetime of the Prophet (S.A.W) and the Prophet (S.A.W) ordered his execution saying, “I am responsible for obtaining redress for the weak.”¹⁴

Even an embryo in the womb of its mother is entitled to this right. That is the reason why the Prophet (S.A.W) postponed the *hadd* punishment on a woman who became pregnant as a result of committing *zinna* (adultery) until she delivered and even weaned the child.¹⁵ And that is also the reason why abortion, except where it is necessary to save mother's life, is prohibited.

2.1.3 Rights to Property

Every human being (including women and children) is generally entitled to this right without any discrimination. There are many textual authorities, in the Qur'an and the Sunnah to that effect some of which are:

- a) Qur'an 2:188 which says:
And eat up not one another's property unjustly (in any illegal way...).¹⁶
- b) Qur'an 4:29 which reads:
O you who believe! Eat up not your property among yourselves unjustly except it be a trade amongst you, by mutual consent...¹⁷
- c) The *hadith* quoted above under “right to Life”, paragraph (f) is also quite relevant here.

However, this right is only guaranteed if the property has been acquired by lawful means. And it includes the right of enjoyment (of the property), its consumptions and investment in business and disposition.¹⁸

2.1.3 Right to Basic Necessities of Life

Everybody without any discrimination is entitled to the provisions of basic necessities of life. Some textual reasons for that include:

a) Qur'anic verse 51:19:

And in their properties there was the right of the *sa'il* (the beggar who asks) and the *mahrūm* (the poor who does not ask others).¹⁹

a) Qur'anic verse 70:24-25:

And those in whose wealth there is a recognized right. For the beggar who asks, and for the unlucky who has lost his property and wealth, (and his means of living has been straitened).²⁰

Accordingly, the *Shari'ah* does not accept a situation where there is soul-grinding poverty side by side with affluence. That is why the Prophet (S.A.W.), in a *hadith* narrated by al-Bayhaqi on the authority of Ibn Abbas, warned that, "He is not a faithful (*Mumin*) who eats his fill while his neighbour remains hungry side by side."²¹

It is thus the duty of Muslims individually and that of their collective institutions, including the government, to help those who are deprived of their basic necessities, especially the weaker ones, women and children, with what they need. This is especially because it has been made clear by the Qur'an that the wealthy are only custodians of Allah with regard to the property they own. The property is actually Allah's property, which they hold as mere trustees.²² It is, therefore, their duty to spend it in the way its real owner wants it to be spent.

2.1.4 Right to Honour

Muslims are duty bound to protect the honour of every human being without any discrimination whatsoever. The Qur'an, the Sunnah and the practices of the early Muslims are quite clear on this. Thus

certain general principles of the protection of this right have been clearly laid down by the Qur'an and the sunnah.

In the Qur'an, Allah (S.W.T), in 49:11 - 12, says:

O you who believe! Let not a group scoff at another group, it may be that the latter are better than the former. Nor let (some) women scoff at other women, it may be that the latter are better than the former. Nor defame one another, nor insult one another by nicknames. How bad is it to insult one's brother after having faith (i.e. to call your Muslim brother... as: "O sinner" or "O wicked"). And whoever does not repent, then such are indeed *zalimum* (wrong doers).

O you who believe! Avoid much suspicion; indeed some suspicious are sins. And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear Allah, verily, Allah is the One who forgives and accepts repentance, Most Merciful.²³

In the *sunnah*, it was narrated on the authority of Abu Hurairah (R.A) that the Prophet (S.A.W) was reported to have said:

Beware of suspicion, for suspicion is the worst of false tales; and do not look for one's faults; and do not do spy on one another; and do not practice *najsh* (i.e. offering a high price for goods in order to allure another customer who is genuinely interested to buy the goods); and do not be jealous of one another; and do not hate one another; and do not dissent one another...²⁴

These principles are not mere theories for they had practical realities in the life of the early Muslims and those who follow their footsteps. The typical example is the report that during the caliphate of

Umar ibn al-Khattab (R.A), one Umair ibn Sa'ad who was the governor of Hums thought that he had no equal in piety, sanctity and other worldliness among officers of the realm, speak thus to a *zimmi* (non Muslim citizen in Islamic state), "May Allah bring you to a disgrace." After these words he felt so ashamed and remorseful that he straightaway went to Caliph Umar and resigned his post saying, "It was because of this high office that these words could escape my lips."²⁵

Another example is the case of Jabalah ibn al-Ayham al-Ghassani who was a very famous chief in Syria. He embraced Islam. So once while performing the *tawaf* (circumambulation) around the *Ka'abah*, the hem of his mantle fell under the feet of someone. He slapped him on the face and as the victim retaliated, Jabalah became indignant and complained to Umar (R.A). Upon hearing his complaint, Umar said, "You but received the punishment of what you have done." Jabalah was amazed at the reply and says, "I belong to a high family, if anyone acts rudely against us he is punished with death." Umar replied, "That was so during the period of *Jahilliyah* (ignorance) but now Islam has equalized all ranks." Jabalah said, "If Islam is a system in which there is no distinction between high born and a common folk, I abjure it." He then secretly fled to Constantinople (an later apostate) but Umar (R.A.) did not like to change the principle of equality for him.²⁵

There are many other similar examples that show how the honour of human beings is highly protected and preserved without any discrimination.

2.1.5 Right to Privacy

Right of privacy to every human being, irrespective of sex has been recognized by the Shari'ah. That is why it prohibits undue interference or encroachment on someone's private life and set certain principles for the protection of the right. Some of these principles are:

a) Qur'anic verse 24:27 which reads:

O you who believe! Enter no houses other than your own, until you have asked permission and greeted those in them; that is better for you, in order that you may remember.²⁶

b) Qur'an 49:13 which provides that:

... Spy not....²⁷

It is in order to protect this right that the Prophet (S.A.W) was reported to have said that if a man, upon finding another man peering secretly into his house blinds his eyes, he would not be held liable.²⁸

Even casting sidelong glances at someone's letter in order to read it is reprehensible.²⁹

Furthermore, no one, even the state has been allowed to interfere with the private affairs of the citizens. That is why the Prophet (S.A.W) was reported to have said, "If the *amir* (Muslim leader) falls into suspecting (and spying on) the people, he causes them to become dishonest."³⁰

2.1.5 Right to Personal Freedom

Shari'ah has provided that every individual in the society is entitled to live freely so that he or she cannot be arrested only on the basis of suspicion or for the offences of others and thrown into prison without proper court proceedings and without being provided a reasonable opportunity to produce his or her defence. That is why Umar (R.A.) was reported to have said, "In Islam no one can be imprisoned except in pursuance of Justice."³¹

And in 6:164 it has been decreed by Allah (S.W.T.) Himself as follows:

... No person earns any (sin) except against himself (only), and no bearer of burden shall bear the burden of another...³²

And no bearer of burden shall be made to bear another's burden, and if one weighed down by his load calls (another) to help him carry it, nothing thereof may be carried (by that another), even if it be one's near kin...³³

All this means that every human being is responsible for his actions. Thus if one does not connive or conspire with another or support him in the actions he will not be held responsible for it nor can he be arrested no matter how closely related he may be to the wrongdoer.

There are only two occasions, according to al-Khattabi in his *Ma'alimus Sunan*, in which detention of a person is allowed:

- a) where there are orders of the court to that effect, namely where a person is properly sentenced by the court and is kept in prison till the expiry of the term of his sentence; and
- b) Where the detention is for investigation.

Abu Yusuf, in his *Kitabul Kharaj* has also stressed the same point that nobody can be imprisoned on false or unapproved charges.³⁴

2.1.6 Right to Freedom of Thought and Expression:

This right is given to all human beings on condition that it is used for the propagation of good virtues and truth but not vices and evil. Another condition is that nobody is allowed, in the exercise of this right, to use abusive or offensive language in the name of criticism.

This freedom includes freedom to hold different opinions and express the same regarding various issues subject to their conformity with the general principles of the Shari'ah.

The Prophet (S.A.W) during his life time, accorded to his Companions full freedom of expression of their differences of opinion with him. He developed their temperament in such a way that they always expressed their differences without any hesitation. The typical

example of this is the occasion of the battle of *Uhud* because the Prophet (S.A.W.) asked the Companions to fight the enemy inside the city of Madinah. They did not obey the instruction because it was not a revelation but his personal opinion. They, instead, suggested that the battle should be fought on the ground of *Uhud* (outside the Madinah) and Prophet (S.A.W.) agreed.³⁵

The mentality that had been inculcated in the minds of the Companions since the lifetime of the Prophet (S.A.W) continued even after him. Thus once a person rose again and again addressing Umar (R.A), when he was the Caliph, “O Umar! Fear Allah!” and when those present tried to restrain him, Umar said, “Let him say it. If these people do not say so they are of no use and if we do not listen to them we are of no use.”

The story of Umar again, when he tried to limit the *sadaq* to 400 Dirham and the Qurayshi woman who challenged him relying on a Qur’anic verse (4:20) and how Umar for that reason discarded his view and reversed his decision, is another typical example.

2.1.7 Right to Freedom of Religion

Every human being is entitled to this basic right. The fact that Muslims are enjoined to invite non-Muslims to Islam does not negate this right. This is because they are not allowed to compel them to embrace Islam, as it has been precisely and categorically declared in 2:256 which provides that:

There is no compulsion in religion. Verily the right Path has become distinct from the wrong path..³⁶

Commenting on this verse, Muhammad Asad said,

On the strength of the above categorical prohibition of coercion (*ikrah*) in anything that pertains to faith or religion, all Islamic jurists (*fuqaha*), without any exception, hold that forceable conversion is, under all circumstances, null and

void. And that any attempt to coercing a non-believer to accept the faith of Islam is a grievous sin: a verdict which disposes of the widespread fallacy that Islam places to the unbelievers the alternative of “conversion or the sword.”³⁷

This means that the claim that Islam was spread by force is not only false but also malicious and mischievous for there are many testimonies to the contrary through some historical events cited by even some non-Muslim Western scholars, like Prof. T.W. Arnold who says:

Of forced conversion or anything like persecution, in the early days of the Arab conquest, we hear nothing.³⁸

Another western scholar who explains this fact is Sir Edward Blyden, a great Christian scholar who says:

There is nothing in the original teaching of Mohammedan religion that requires hostility to Christians... the spirit of the religion as taught in its original records is tolerant.³⁹

As why sometime intolerance is observed on the part of Muslims, another Western scholar Higgins expresses the reason as follows:

The excessively bigoted character of the modern Mohammedans may, in a greater measures be attributed to the attacks made upon them by the Christian orders of Knighthood, the Crusades etc and by intolerant spirit of Orthodox Christianity which in its turn produces intolerance. I know well that Christians are apt to look down with sovereign contempt upon Mohammedans and upon everything relating to them and their religion: but let them inquire and they will find that Mohammedans were, soon after the establishment of their religion, the most liberal and enlightened race on earth..⁴⁰

Islam does not only forbid coercion in the matter of faith and religion but also forbids the use of abusive language against deities of other religions. This has been enunciated in 6:108 which provides that:

But do not revile those (beings) whom they invoke instead of God, lest they revile God out of spite and ignorance...⁴¹

There are, however, two issues to be clarified in respect of freedom of religion. The first one is that the verse that "There is no compulsion in religion" (i.e. 2:256) previously quoted raises the question of whether this principle can be reconciled with the obligatory duty of *jihad* i.e. taking up arms for the defence and protection of the faith which Islam has openly advocated and the Qur'an has established in many verses one of which is 2:193 provides that:

Fight them until there is no more oppression and God's religion reigns supreme.

This is because those who are ignorant of the real objectives of *jihad* accuses Islam of double standards claiming that it was spread and imposed by the sword while at the same time, advocating non-coercion and freedom of religion.

So it should be clear that throughout its long history, Islam has advocated the use of force (through *jihad*), not to impose its doctrines, but to guarantee certain objectives that are necessary for human prosperity.

The first objective, as explained by Sayyid Qutb, is to protect the Muslims against attacks and threats and to ensure their security and freedom without which the religion cannot survive. This is because anybody who does not feel secure by being a Muslim and feels that he may be attacked for being so, he may not accept the faith. Thus the survival of the faith and its future is not guaranteed without *jihad*. That is why Islam considers religious persecution and threat to religion more dangerous for the future stability and existence of Islam than actual war.

And according to this principle the survival and prosperity of the faith take precedence over the preservation of human life.

The second objective is to guarantee the right and freedom of expression and propagation of the faith. And Islam being a universal and global message, it addresses all human beings. For an individuals to freely choose Islam or not they need free atmosphere and that nothing should stand between them and the message. Thus any obstacle that stand between people and the message is removed through *jihad* so as to create that free atmosphere.

The third objective is establishing the Islamic social order that frees man from tyranny of other men by urging submission to Allah. This is the only way to guarantee individual freedom for every member of society, including non-Muslims. And it is natural that the tyrannical regimes and individuals that subjugate the people and enslave them will inevitably respond with hostility and aggression, while Islam will also inevitably respond with determination to stamp out such regimes and individuals (through *jihad*) and assert its legal, ethical and economic world order. However, Islam undertakes to respect and guarantee the individual religious and personal freedom of everyone under its jurisdiction, subject to its ethical principles and social norms and regulations.⁴²

The verse (i.e. 2:256) should be read in conjunction with 8:60 that reads

Equip yourselves against them (the enemy) with all the force and war steed you can muster, so that you may strike terror into the enemy of God, Who is your enemy, and deter others besides them who are unknown to you but of whom God is fully aware...⁴³

This gives the correct perspective of Islam regarding the fact that Muslim should not be on the defensive but should be confident and proud of its teachings and its history compared with those of all other cultures and philosophies.

The second issue that needs clarifications is the extent of the Muslim's right to freedom of religion. This is because some Muslims, out of ignorance or misconception quote, 2:256 and argue that they can do whatever they want. They feel that even performing *salat* or complying with Allah's command on some issues is voluntary or optional which they can decide by themselves what to do contrary to Allah's decision and nobody has the right to even talk to them on that by virtue of their freedom of religion. They think they are even entitled to change to another religion because this is one of the elements of freedom of religion under the modern secular constitutional and international law.

It should be clear that a Muslim has no freedom to change and convert to another religion for if he does so a capital punishment (of death sentence) shall be imposed on him, beside another punishment in the hereafter awaiting him.

Some Qur'anic provisions regarding this include:

a) 2:217

... and whoever of you turns back from his religion and dies as a disbeliever, then his deeds will be lost in this life and in the hereafter, and they will be dwellers of the Fire. They will abide therein forever.⁴⁴

Qurtabi, in justifying his view, in support of imposing death sentence on apostate, said:

A capital punishment must be given against apostasy based on the *hadith* of the Messenger of Allah that, "whoever changes his religion kill him."⁴⁵

Sheikh Tantawi, on this verse, has this to say:

... This *ayah* is a strong warning from Allah (S.W.T), that the appropriate punishment for those who desert belief from Islam is death.⁴⁶

- b) The *hadith* in which the Prophet (S.A.W) was reported to have said,
“Whoever changes his religion (i.e. converted from Islam to another religion), kill him.”⁴⁷
- c) It was reported on the authority of Abdullahi Ibn Mas’ud that the Prophet (S.A.W.) said, “It is unlawful to shed blood of a person professing Islam, who testifies that there is no god but Allah and I am the Messenger of Allah, except in the case of life for a life, or a married person guilty of adultery or a person who quits his religion and disserts the community.”⁴⁸

From all that has been explained it is clear that freedom of religion, in the case of Muslims, in the sense that he can be Muslim or not if he so wishes, or to convert to any other religion, is not applicable to them. So a Muslim has no option but to practice the laws decreed by Allah and his Messenger (S.A.W). This is in accordance with the Qur’anic verse 33:36 which provides:

Now whenever God and His Apostle have decided a matter, it is not for a believing man or a believing woman to claim freedom of choice insofar as they themselves are concerned: for he who (thus) rebels against God and His Apostle has already, most obviously, gone astray.⁴⁹

2.1.8 Right to Freedom of Association:

This right is guaranteed to every human being only for the purpose of propagating good virtues and righteousness and not for spreading evil and mischief. This is in line with the Qur’anic provisions some of which are:

a) 3:104-105.

Let there arise out of you a group of people inviting to all that is good (Islam), enjoining *al-Ma'ruf* (i.e. Islamic monotheism and all that Islam orders one to do and forbidding *Al-Munkar* (Polytheism and disbelief and all that Islam has forbidden). And it is they who are the successful. And be not as those who divided and differed among themselves after the clear proofs had come to them. It is they for whom there is an awful torment.⁵⁰

b) 5:2

... Help you one another in *Al-Birr* and *At-Taqwa* (virtue, righteousness and piety); but do not help one another in sin and transgression. Allah is severe in punishment.

2.1.9 Right to Protest Against Injustice and Oppression

This right, which belongs to every human being, has been enunciated in the Qur'anic provision, 4:148 which reads:

Allah does not like any evil to be mentioned openly, unless it be by him who has been wronged thereby.⁵²

The wording of the verse is general which indicates that it is not limited to individuals. Thus where an individual or a group of people usurps power and after assuming the reins of authority begins to tyrannize individuals or groups of people or the entire population of the country then to raise the voice of protest against it openly is the God given right of man and no one has the authority to usurp or deny him of it. If anyone tries to do that, then he rebels against Allah.⁵³

2.1.10 Right to Avoid Evil

Every human being has the right not to be ordered to commit an evil act or omit an obligatory one. Thus if an individual or a group of individuals are ordered to commit an evil act or to avoid an obligatory

one by anyone or any government, administrator, head of department, or any group, they have the right to refuse to comply with the order. The refusal will not be regarded, under the *Shari'ah* as an offence. Rather, the refusal is, under normal circumstances, regarded as obligatory upon the person ordered. This is in accordance with the hadith in which the Prophet (S.A.W.) was reported to have said, "NO obedience is due in sinful matters: behold, obedience is due only in the way of righteousness."⁵⁴

In another version of the hadith, the Prophet (S.A.W) was reported to have said, "NO obedience is due to him who does not obey God."⁵⁵

2.1.11 Right to Justice

Every human being, irrespective of any consideration, is entitled to this right. This is by virtue of many provisions of the Qur'an and the Sunnah to that effect. Some of these provisions are:

a) Qur'an, 4:58

Behold! God bids you to deliver all that have been entrusted with you unto those who are entitled thereto, and whenever you judge between people, to judge with justice...⁻⁵⁶⁻

b) Qur'an 4:135

O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents or your kin, be he rich or poor, Allah is Better Protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice; and if you distort your witness or refuse to give it, verily Allah is Ever Well-Acquainted with what you do.⁵⁷

c) Qur'an 5:8

O ye who have attained faith! Be ever steadfast in your devotion to God, bearing witness to the truth in all equity and

never let hatred of anyone lead you into the sin of deviating from justice. Be just: this is closest to being God-conscious. And remain conscious of God; verily, God is aware of all that you do.⁵⁸

- c) Ubadah ibn as-Samit reported the Prophet (S.A.W), saying: “Give equitable punishment to the remote and the near and have not fear of reproach of people in enforcement of the limits set up by God”.⁵⁹

Equality Before the Law

By virtue of the above mentioned concept of justice to which all human beings are entitled, the right to equality in the eyes of law is also due to every human being. That is why the determining factor of one's superiority is nothing but righteousness. Thus, the Qur'anic verse 49:13 provides:

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him; Behold God is all-Knowing, all-Aware.⁶⁰

And the Prophet (S.A.W) in his address, during his Farewell Hajj, explicitly declared that:

No Arab has superiority over a non-Arab, no non-Arab has any superiority over an Arab. Nor does a white man have any superiority over black man or a black man have any superiority on white man. You are (all) children of Adam and Adam was created from clay.⁶¹

The Prophet (S.A.W) showed practical example of this principle. It was reported that once a woman belonging to Banu Makhzumah, a

noble clan in Madina committed theft and the case was brought before the Prophet (S.A.W) Usamah bn Zayd (R.A) wanted to intercede upon her. But when Usamah contacted the Prophet (S.A.W) on the matter, he replied:

The nation that lived before you were destroyed because if weak (and poor) person committed theft they would amputate his hand but if a noble person committed theft they would leave him unpunished. I wear by Him in whose hand my life is, that even if Fatimah the daughter of Muhammad had committed theft then I would have amputated her hand.⁶²

Equality of Genders

It is quite relevant, at this juncture to shade some light on equality between man and women or what is now called "gender equality", which is the root cause of the confusion about the concepts of freedom or "liberation" or "oppression." The concept of equality has been seriously misunderstood by the modern Western societies (and those who ape them blindly), because they, under the misconception, accept the concept without giving due consideration to what equality in its best sense ought to mean. That is why, in spite of the loud shout about equality between men and women, and in an attempt to provide women with an equal status with men in all respects Western civilization has just been able to provide her with serious inequality which can never be solved by it. That is why an internationally acclaimed Western writer, Germaine Greer, on this, said:

The West has no answer to the problems of inequality between sexes.⁶³

But Islam, being the system of life designed by the Creator of men and women provides perfect solution to the problems. Thus it provides that man and woman are equal participants so far as carrying out the functions of daily living is concerned. And they also have equal rights

over each other, which have been balanced by equal duties as Allah the Creator (S.W.T) explains in 2:228:

... And they (women) have rights (over husbands as regards living expenses similar to those of their husbands) over them (as regards obedience and respect) to what is reasonable... -⁶³

The Qur'anic verse, 9:71, by using the term *awliya* has summed up the role of men and women towards each other. The verse provides that:

The believers, men and women are *awliya* (helpers, supporters, friends, protectors) of one another; they enjoin (on the people) *al-ma'ruf* (i.e. all that Islam order one to do) and forbid People) from *al-munkar* (i.e. all kinds of things that Islam has forbidden); they perform *as-salat* and give *zakat* and obey Allah and His messenger.⁶⁴

This verse clearly shows that men and women are equally responsible for reforming the society through social, political, educational and economic mediums and that they perform this job in an atmosphere of security and protection towards each other.

However, this equality, from the point of view of the Shari'ah does not mean absolute or unrestricted equality or identity or sameness. It only means overall equality in the totality of rights and responsibilities of both sexes. And even though men and women are equal in their status, their roles and rights differ due to their natural differences, so much that they are not regarded as the duplicate but as complement of one another, there being in each quite incontrovertible biological differences which lead to natural separation of sphere and occupation. Therefore, anybody who does not accept the differences between the sexes, even by trying to deliberately resemble the opposite sex has been cursed by the Prophet (S.A.W).⁶⁵

But the fact that men and women are naturally different does not mean that one is superior to the other. This is because the criterion of

superiority in Islam is piety and God-consciousness (*at-taqwa*), as it has been provided by the Qur'anic verse 49:13 previously quoted.

The fact that woman is equal to man has accorded to her a separate identity under the Shari'ah. She enjoys and retains this identity not only in domestic life but also in social, political and economic life. That is why the Prophet (S.A.W) took a separate *bay'ah* (allegiance) from women upon the instruction from Allah in the Qur'anic verse 6:12⁶⁶.

However, the fact that woman, under the Shari'ah, has a separate identity, does not mean that she can seek an independent life, namely independent of man because this can never be possible. It is even contrary to scientific reality and practical life. It is on this that an American lady Mrs. Marabel Morgan recently published her book titled. "Total Woman" in which she divulged to her American sisters how they could be successful in their marital life. She says:

Be nice to your husband, stop nagging him and understand his needs.

The writer adds that:

The perfection of womanhood lies in the woman's ability to become a good companion of her husband rather than seek independent life.⁶⁷

Women, under the Shari'ah are not only not independent of men but are under man's guardianship and full care. The Creator of man and woman has assigned this guardianship and it is, therefore, natural. This assignment has been affirmed by the Qur'anic provision 3:34 which reads:

Man shall be *qawwamuna alan nisa'i* (i.e. they shall) take full care of women with the bounties which God has bestowed more abundantly on the former than the latter, and with what they spend out of their possession.⁶⁸

This guardianship, irrespective of its misuse and being exploited

by some harsh man (which incurs grave torment at least in Hereafter) is natural and, therefore, universal which stems not from social oppression of woman, as claimed by the feminists, but fundamental differences between the sexes. This is what has been said by even Westerners who are on the feminist side like Margaret Mead, who is an expert anthropologist; after a lifetime spent researching the diverse societies of the world she has declared:

All the claims so glibly made about societies ruled by women are nonsense. We have no reason to believe that they ever existed. Men have always been the leaders in public affairs and the final authorities at home.⁶⁹

2.1.12 Right to Free and Compulsory Education:

The right (and duty) to express one's opinion freely may be meaningless or even injurious to the interest of the society where the opinion is not based on sound thought which is the result of knowledge. Thus it is the citizen's right against the government to have a system of education which would make knowledge freely accessible to every individual in the state, men and women.⁷⁰

Seeking knowledge, is not merely a right: it is also a duty enjoined upon every Muslim, man and woman alike. The Prophet (S.A.W.) was reported to have said, "Search for knowledge is obligatory (*faridah*) upon every Muslim."⁷¹

3. Women's Special Rights

Due to the peculiarities and social characteristics of woman, the Shari'ah has granted her some special rights, in addition to the general rights discussed above. However, as correlatives to these special rights, certain special duties have been imposed on her. These special rights have been classified into (i) material rights and (ii) non-material rights.

3.1 Material Rights

The material rights of woman includes two things:

a) *Sadaq* (dower); and (b) *Nafaqah* (maintenance). *Sadaq* is the special right of the wife; it is her sole right which is obligatory on the husband to pay her.

Nafaqah, consists of food, cloth, shelter, medication and general care. It is woman's right, as a wife on her husband, daughter on her father, mother on her son and sister on her brother. This is by virtue of the Qur'anic verse 4:34 which has already been quoted.

Other relevant verses of the Qur'an on this are: 2:233 and 65:6-7. Moreover, in a *hadith* narrated by Muslim, the Prophet (S.A.W) in his address during his Farewell Hajj was reported to have said, "... Fear Allah regarding women for you have taken them by the word of Allah and made their private parts lawful by the word of Allah... And they have upon you the rights of feeding and clothing in equitable manner..."⁷²

3.2 Non Material Rights:

The non-material rights of women include the following :

3.2.1 Right to Kindness and Good Treatment

A woman whether as a wife, daughter, sister, mother or any other woman and whether there is any blood relationship between her and man or not is entitled to this right against the man. This by virtue of Qur'an verse, 4:19

... And consort with them (i.e. women in a goodly manner..⁷³

Treating one's family (the wives) with kindness, mercy and affection has been regarded by the Shari'ah, as a sign of the perfection of one's *iman* (faith). The Prophet (S.A.W) was reported to have said:

The most perfect among the believers, in terms of *iman* is he

who is the best in character. And the best among you are the best to their wives.⁷⁴

It is within the meaning of this right that the husband must be lenient to and friendly with his wife and must endure and tolerate her bad aspect of her character. It is on this that the Prophet (S.A.W.) said:

I advise you to take care of women for they have been created from a rib and the most crooked part of the rib is its upper one; if you try to straighten it, it will break, and if you leave it, it will remain crooked. So I urge you to take care of women..⁷⁵

He was reported to have said:

Let not a believing man hate a believing woman for if he hates one of her behaviours, he may like another behavior of hers.⁷⁶

As for the mother, the Qur'an enjoins man to be kind to his parents with particular reference to mother. On this read 31:14 and 46:15.

Mothers have been given a special place in Islam. Thus in a hadith narrated by al-Bukhari and Muslim, it was reported that a man asked the Prophet (S.A.W), "who is the most deserving of my care?" He said, "Your mother." The man asked again, "then who?" he said, "Your mother." The man asked (for the fourth time), "then who"? he said, "Your father."

Being good and kind to mother entails treating her well, respecting her, being dutiful to her, obeying her without disobeying Allah, seeking her pleasure and satisfaction in everything including attending *jihad* where it is a collective responsibility *fard kifayah*). If it is so then it is not lawful for him to engage in it except with her permission for being good to her is a form of *jihad*.⁷⁸

A man came to the Prophet (S.A.W) and said, "O the apostle of

Allah! I want to participate in war (i.e. *jihad*) and I came to seek for your advice.” He asked him, “do you have a mother?” The man, replied, “Yes.” The Prophet (S.A.W) said, “Remain with her because the paradise is at her feet.”⁷⁹

Kindness to mother’s relatives, especially the female ones among them, has been included within the meaning of kindness to her. Thus it was reported that a man came to the Prophet (S.A.W.) and said, “O the Apostle of Allah! I have committed an offence. So can I repent (of what I have committed)?” The Prophet (S.A.W.) said, “Do you have a mother?” the man said, “No.” The Prophet (S.A.W), “Do you have a maternal aunt?” the man said, “Yes.” The Prophet (S.A.W.) said “Then be good to her.”⁸⁰

Kindness to mother, even where she is a non-Muslim, is obligatory. Thus when Asma bint Ababakar asked the Prophet (S.A.W) about being good to her non-Muslim mother who had come to her, he answered in the affirmative and said, “Be good to your mother.”⁸¹

As part of kindness to mother, the Shari’ah has vested in her the right of custody of the child where the marriage between her and the child’s father is terminated. Thus a woman came to the Prophet (S A.W) complaining that her husband (who had divorced her) wanted to take away the child born of him by her. The Prophet (S.A.W) told her that, “You are entitled to have his custody.”⁸²

However, mother, who has been given all this attention, by the Shari’ah has, on reciprocal basis, certain responsibilities on her to discharge. Some of these responsibilities are that she has to bear and train her children properly by implanting good virtues in them and making them to loathe evil. She should also teach them to be familiar with obedience to Allah, encourage them to defend the cause of truth and not to dissuade them from *jihad* (struggle in the cause of Allah) due to motherly sentiments.

As for daughter, she is first and foremost regarded by the Qur’an in 42:49-50, as a gift from Allah (S.W.T). The Qur’an informs us that a

daughter may even be more remarkable in influence and more immortal in memories than a son. It has given the illustration of this in the story of Maryam (or Mary) the daughter of Imran and mother of Isa (or Jesus), (A.S) who was chosen by Allah, though her mother had wished the child to be a male.⁸³

Moreover, in a hadith, reported on the authority of Abu Hurairah, the Prophet (S.A.W) was reported to have said, “Whoever has three daughters and shows patience in keeping them and (is mindful of) their pleasure and their displeasure Allah admits him to paradise for his mercy over them.” Then a man said, “And what about two daughters, O the Apostle of Allah? He said, “And two daughters as well.” Then another man asked, “O the Apostle of Allah what about one daughter.?” He said, “And one daughter as well.”⁸⁴

Women, generally are entitled to care, respect and kindness because the Prophet (S.A.W), in one of his final instructions, said, “ I command you to be kind to women.”⁸⁵ Thus, women, even without any blood relationship, are regarded as sisters as the Prophet (S.A.W) was reported to have said, “Women are but the twin sisters of men.”⁸⁶

3.2.2 Respect for women’s Chastity

Women are entitled to have their chastity protected and respected under any circumstance, even if they belong to the ranks of the enemies. This is because by virtue of their chastity and modesty, they protect the human race and the descents of their husbands.

The Shari’ah has made all necessary provisions in form of precautions in order to protect and preserve this chastity and modesty. One of such provision is making the protection of the chastity to be one of the main objectives of marriage, under the Shari’ah.⁸⁷ That is why husband is not allowed to stay from his wife for more than four months, even if he is in the battle front, as decreed by the second caliph, Umar Ibn al-Khattab.⁸⁸

Another precaution is that where the husband intentionally refuses to have intercourse with his wife, he is given the respite of only four months after which he should either restore sexual relations with her (so as to preserve her chastity) or divorce her so that she can marry another who will protect her chastity by gratifying her sexual urge. This is fully covered under what is technically called *ila* (vow of continence), which has been provided by the Qur'anic verse 2:227 – 228.

Beside these, there are other precautions for the protection of woman's chastity that include prohibiting *zina* (adultery or fornication) and imposing severe punishments for committing it; prohibiting free and indiscriminate intermingling between the opposite sexes; prohibiting seclusion with a woman by a man who is not her husband or *mahrim* (i.e. a man with whom marriage is permanently prohibited by virtue of blood relationship with him); and prohibiting indecent dressing and behavior, especially by a woman.

4. Areas of Differences Between Man and woman in their Rights

There are some differences between man and woman with regard to some of their rights. These differences are due to differences in need and capabilities (of the two sexes) because they naturally differ in their respective functions. These differences are categorically indicated by the Creator of the two genders in His Glorious Book several times.⁸⁹ For this reason a Muslim must accept them. And that it is not lawful for either of the sexes to hope to have what is naturally specific for the other or even to believe that the differences are socially created and not naturally made by the Creator.⁹⁰

It is in view of all this that Shari'ah has not granted the same rights to men and women in everything in the same way as it has not imposed the duties on both of them on all occasions. However, the sum total of all the rights granted to woman is not less in value than the rights granted to man.

These differences, are usually used to propagate against Islam by its enemies and ignorant as examples of negation of woman's rights and her identity. It is not possible to discuss all these differences and in details in this humble presentation for it may result in presenting a book for which there is no much time. However, some of the most controversial are hereby discussed.

4.1. On Inheritance:

It is a general rule, under the Shari'ah, that females of the same degree shall share together the estate left by the deceased except that, in some case, male heirs shall have double share of female heirs. Some people, either out of ignorance or mischief or both consider this difference as discrimination against and proof of indifference towards the fundamental rights of women. Such people are oblivious of the following:-

- a) That the law regarding inheritance was revealed when the whole human societies of that time did not grant any inheritance right to woman folk as of right as is the case even today among the so called advanced or developed societies of the Western world where not only woman, but even man is not entitled, as of right to inherit unless the deceased person dies intestate, i.e. without leaving any will.
- b) That man is obliged to protect woman as social, economic and even moral responsibility, which is in accordance with the provision of 4:34 (already cited). This rule has made it obligatory upon father to maintain his daughter, upon the husband to maintain his wife, upon son to maintain his mother and upon brother to maintain his sister. The law also has obliged a distant relative of a woman to maintain her where she has no close relative. Where there is no even the distant relative, the responsibility falls upon the state.

- c) That women receives *sadaq* (dower) for marrying her while man gives out the *sadaq* to her whenever he want to marry her.
- d) That woman is not obliged to maintain even herself even if she is wealthier than her husband while man is duty-bound to maintain not only his wife but his unmarried daughter and sister, and his parents, especially his mother. Thus, woman normally preserves her share of inheritance and other property, while man has to spend not only his share of inheritance, but also sometime his other property for the maintenance of woman.
- e) That it is not in all situations that the rule of allotting half share of that of male to the female, applies because in many cases, woman's share is not only equal to but even more than that of man. There are many examples of this in the works of Muslim jurists.
- f) That it is Allah (S.W.T) who knows better what suits His creatures and more merciful to woman than anybody, that has decided these shares. Thus the decision can never accept any change. So, nobody whoever he is can validly give any interpretation or act contrary to such categorical decisions, otherwise he will go astray as it has been established in 33:36.

4.2 On Giving Testimony

Giving testimony is one peculiar areas that differentiates between man and woman. Accordingly, the capacity of women has been ousted in all hudud cases (i.e. punishments that have been specified) with the exception of qadh (i.e. false accusation of committing zina) and in cases involving bodily injuries; and even in cases of marriage, divorce and its revocation, according to Maliki and Hanafi jurists. But Hanafi jurists are of the view that testimony of women is admissible in cases involving rights in property, and in cases of marriage, divorce and its revocation. Ibnul Qayyim subscribes to this view⁹¹.

Moreover, in most cases where her testimony is held to be admissible along with that of men, the number of the female witnesses is usually double the number of the male witnesses.

All these shows that man and woman, in this respect, are treated by the Shari'ah differently and this difference has caused a lot of criticism and accusation or even condemnation of Islam itself, especially by its enemies. In a sort of reply to such baseless criticism and accusation, the following points should be considered:

- a) that it has been proved by the principles of criminology and cases of criminal procedure as well as psychology that information greatly differs in every case and incidence depending on the description of the happenings given by the witnesses. And experience has shown that the evidence given by sentimental and sympathetic people who have naturally a stronger power of imagination is less accurate since their power of imagination unintentionally introduces changes in the facts of the matter and its description causing some changes therein. A woman by nature is dominated by sentiments. It is, therefore, appropriate that her evidence in matters of great importance should be accompanied with greater support⁹².
- b) In some cases, the testimony of a woman is considered similar to that of man. For instance, in case of li'an (imprecation)⁹³, both spouses shall equally give testimony four times (swearing) and in the case of husband that his accusation against his wife is true and pronounce imprecation in the fifth time; and in the case of wife that the accusation against her is false and then pronounce an imprecation for the fifth time.
- c) In certain cases, the testimony of women alone is exclusively admissible, such as in the case of proving birth, virginity of a woman. And according to some jurists, evidence given by a

single woman in certain case, such as in the case of proving foster relationship or evidence by a midwife to prove that a child has been born alive is admissible while, in all such cases, the evidence given by men is inadmissible.

- d) Some jurists are of the view that a woman's testimony is admissible even in criminal offences committed in women's gatherings that are not usually attended by men such as women's oriental pools (hammamatus-Nisa'i), wedding parties solely attended by women and similar gatherings. Thus if for instance, a woman kills or inflicts an injury on another and the only witnesses around are women, their testimony shall be admitted in as far as they are honest, accurate, mindful and have sense of justice (because there are the qualities required of a witness)⁹⁴.
- e) After all evidence or testimony is not a right, under the shari'ah but a duty, the withholding of which or refusal to give is a crime according to the Quranic verse 2:283 which provides

... And conceal not the evidence for he who hides it, surely his heart is sinful....⁹⁵.

Hence, if a large number of witnesses is prescribed to prove a case, the duty of an individual (regarding it), is then reduced. Thus, women's burden, in matters of giving testimony and evidence is lessened. And this cannot be a reason for the claim that woman's rights under the Shari'ah is considered lesser than that of man.

4.3 On Diyyah for Homicide or Infliction of Injury

Diyyah is a compensation paid for killing someone or inflicting bodily injury on someone or damaging or destroying a human limb, whether wrongfully or willfully, where compensation is accepted in lieu

of qiyas (revelation). The compensation is either paid to the victim upon whom the injury is inflicted or the legal heir of the victim of homicide⁹⁶.

Majority of Muslim jurists, are of the view that the diyyah or compensation for killing a woman is half of that of a man. And in the case of injury, Imam Shafi'i and Imam Abu Hanifah hold that the female's diyyah (for inflicting injury) is half of that of the male. But according to Imam Malik and Imam Ahmad the diyyah (of inflicting injury) for man and woman is equal to the extent of one third (of full diyyah for killing a man), but where the diyyah is more than that, the female's diyyah would be half of the males⁹⁷.

In holding their views, the majority of jurists, relied on the decision of Ali, Umar and Ibn Mas'ud on the issue. They also argue that woman in inheritance gets half-share of man, and her testimony is also considered half of man, likewise her diyyah should be half of that of man⁹⁸. Some unauthentic hadiths are also quoted in support of the view.

On the other hand, some jurists are of the view that the diyyah of a woman is the same as the diyyah of a man. Ibn Atiyyah and ibn Ulayyah among the classical jurists and Sheikh Yusuf al-Qardawi, among the contemporary ones are of this view. In holding this view they rely on the general provision of the Qur'an in 4:92:

It is not for a believer to kill a believer except (that it be) by mistake; and whoever kills a believer by mistake, (it is ordained) that he must set free a believing slave and a compensation (blood money, i.e. diyyah) be given to the deceased's family.

The jurists argue that the term "believer" in the verse, undoubtedly includes both man and woman. Thus, the diyyah of both man and woman must be the same since the term "believer" is applicable to both of them. Sheikh Mahmud Saltut subscribes to this interpretation, in his book al-Islam Aqidah wa Shari'ah under the heading, "Diyyah" of men and women are the same"¹⁰⁰.

The jurists also quote an authentic hadith to further support their view. In the hadith the Prophet (S.A.W.) was reported to have said, “For a life, a hundred camel (is the diyyah) – Fin nafsi mi’atun minal ibil”¹⁰¹.

Qardawi, after indicating his agreement with this view, says :

“If anybody opts for this view today, he is not to be blamed since fatwa (legal opinion) changes for the change of time and place, especially where the new fatwa is in conformity with the provisions and general objectives of the Shari’ah”¹⁰².

It is clear from this discussion that Muslim jurists are not unanimous on woman’s diyyah. But some people who are ignorant of these juristic differences always employ the view of the majority on this issue to show that the rights or even the personality of women have been diminished by the Shari’ah for that reason. However, even the view of the majority can validly be justified for the following reasons:

- a) While half diyyah of that of a man has been fixed by the shari’ah, in respect of a woman she is conversely not treated among the ‘aqilah’ (i.e. agnatic heirs; male relatives are collectively held responsible for the payment of diyyah for homicide committed against or injury inflicted on someone by their relative)¹⁰³.
- b) It is man that is legally responsible for providing maintenance to his family members including woman who may be his wife, mother, daughter, sister or even other female relative who are in needs. Thus, if he is killed a number of people will be left behind whose maintenance needs to be provided¹⁰⁴.

4.4 On Divorce

The right to divorce, under the Shari’ah, is primarily vested in the husband. This is one of the most prominent objections raised against the Shari’ah by the enemies and sometime even by ignorant Muslims. But

this step taken by the Shari'ah is justified because it checks rate of divorce for the following reasons:

- a) It is the husband who is bound to spend in contracting marriage and in maintaining the wife. Moreover, he has no right, after divorcing the wife, to receive anything out of what he has spent for marrying her. And if he wants to marry another wife he has to incur expenses for contracting the marriage. The husband, for these reasons, would think twice before embarking on divorcing his wife. But the wife does not incur all these expenses. Thus, if the right to divorce, was vested in her, she might exercise it for some flimsy reasons without thinking of any financial consequences¹⁰⁵.
- b) Another reason for vesting the right in the husband has to do with the differences in the natural dispositions of the spouses. It is an established fact that there are some physiological and psychological differences between men and women. Accordingly, the primary functions of each of them differ from that of the other. Thus, a woman is more emotional than man so as to suit her primary function of bringing up and rearing of children. If, in view of this, the right to divorce were vested in the wife, she might, most probably, effect the divorce on her husband the moment she becomes angry or desirous to do so on emotions and sentiments after a small conflict or even without conflict) with her husband and then regrets afterwards)¹⁰⁶.

However, there is no denying the fact that even among men there are some who are even more emotional than some women and that among women there are some whose sense of resistance and rational judgement override their emotions and sentiments, but this is rare and exceptional. And rules are not based on exceptional cases.

- c) It is in the husband, that the principal sources of the Shari'ah, the Qur'an and Sunnah, have vested the right. The Quran has done so in many of its verses which include, 2:30, 36 and 37, 33:49 and 65:1. In all these verses, it is the husbands that have been addressed with regard to divorcing their wives and not the vice-versa which evidently shows it is in husbands that the right has been vested. And in the Sunnah, there is a hadith in which the Prophet (S.A.W.) was reported to have said, "The right to divorce belongs to the husband"¹⁰⁷. It is in view of this that Professor Fazl Ahmad came to the conclusion that:

".... Both according to the verdicts of Allah and His Messenger, it is not lawful to deprive the husband of the right to divorce and hand over this right to the court. This step is wrong even on ground of common sense. This can only lead to publishing shameful domestic affairs in court, as is happening in Europe"¹⁰⁸.

4.5 On Polygamy

Man and man also differ regarding polygamy. Thus, Islam has prohibited multiple spouses for women because it is against her nature and temperament. Secondly, a woman's contact with more than one man causes natural damages to her, such as venereal disease, giving birth to deformed or sick children. It also occasionally leads to sterilization and nervous and psychological and other ailments¹⁰⁹. And thirdly, it leads to the loss of ancestry and parenthood of children.

On the other hand, multiple wives has been permitted to man because it is in accordance with the law of nature and temperament. This is because, in most cases, a woman, after conception does not feel much inclined towards man and even shows sensitivity and becomes temporarily frigid. Man, on the other hand, does not get such feelings

because his natural instinct is always alive and cannot be compelled naturally to forget this instinct.

Secondly, the period of monthly menstruation of women deprives the woman nearly one third of her life from the point of view of sex but there is no such thing for man.

Thirdly, a woman reaches her menopause at the age of fifty years, while man may feel the necessity of having a woman and children for another ten or more years.¹¹⁰

Fourthly, women out-number men at birth and live longer than men do. And the fact that men are usually more involved in road accidents, violent crimes, death in war and the rise of the rate of homosexuality, especially in the Western society, it becomes obvious that there are not enough men for each woman to have one. Thus, many women are obliged to become mistresses, girlfriends and playmates to fulfill their natural and physical needs, leaving their psychological needs distorted in such demeaning relationships¹¹¹.

For all these reasons, Islam, being the way of life which is in accordance with the nature (*dinul-fitrah*), according to which Allah (S.W.T.) has made Mankind allows Muslim man to marry up to four at one and the same time if he so needs. And this permission is not the innovation of Islam because multiple wives for man had been in existence among all the previous nations before the Muslims. Islam has only introduced to this some changes and improvements by stipulating some conditions which are:

- i) Restricting the maximum number of women a man can marry at one and the same time to only four;
- ii) Justice to and among the wives, which includes ability to maintain the wives adequately.

These two conditions have been summarized in the following Qur'anic verse 4:3:

Marry women of your choice; two or three or four; but if you fear that you shall not be able

to deal fully (with them) then one ... that is nearer to prevent you from doing justice¹¹².

As to the requirement of “justice”, in this verse, Abd al-Ali says:

“What the Qur’an requires is what is humanly attainable, that is justice to wives in terms of companionship, provisions (in terms of maintenance, considerateness and such controllable aspects of the family¹¹³.

Failure to do this type of justice between wives imposes punishment on the husband, in the Hereafter according to a hadith in which the Prophet (S.A.W.) was reported to have said; “Whoever has two (or more) wives and prefers one (or more) over the other(s), he comes to the Day of Judgement bent on one side”¹¹⁴.

But concerning love, indiscriminating feeling, towards the co-wives and controlling emotional inclinations fully so that sentimental sympathy of the husband will not be greater for one wife than the other, these are impossible and do not come under the capability of the husband, and therefore, are not required of him. It is regarding this that Allah (S.W.T.) Himself, in 4:129, says:

You will never be able to do (perfect) justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provisions) so as to leave the other hanging (i.e. neither divorced nor married). And if you do justice and do all that is right and fear Allah by keeping away from all that is wrong, then Allah is Ever Oft-Forgiving, Most Merciful”¹¹⁵

The Prophet (S.A.W.) interpreted this Qur’anic provision by both his words and practice. Thus, in a hadith, it was reported that after

treating his wives equally, he said, “O Allah! This is my division in what which I am competent; so do not hold me responsible regarding what only you is competent but regarding I am not”¹¹⁶.

This is briefly the position of polygamy under the Shari’ah. But some modernist Muslim, in their imitation syndrome, have not only questioned the wisdom behind institutionalizing polygamy, but even try to prohibit it totally by giving their wrong interpretation of the Qur’anic provisions regarding it. In the process of giving their erroneous interpretation they argue that marriage to more than one wife is restricted to the ability to do justice between the wives by virtue of 4:3 and this justice by virtue of 4:129 is not possible because it is beyond human capability. Therefore, such marriage is unlawful. But from the previous discussion on this issue, it is obvious that this so-called interpretation is not only wrong but unlawful. Allah (S.W.T.) has permitted it and the Prophet (S.A.W.), his Companions and their disciples practiced it. The early Muslim scholars practiced it. And even today many Muslims practice it. Allah (S.W.T.) has warned against prohibiting what he has not prohibited in 16:116:

And say not concerning that which your tongues put forth falsely: “This is lawful and this is forbidden” so as to invent lies against Allah. Verily, those who invent lies against Allah will never prosper¹¹⁷.

4.6 Inter-Religious Marriage

This is another area where there are differences between men and women. Thus, it is lawful (according to a categorical Qur’anic provision) for a Muslim man to marry a Ki’tabiyyah (i.e. a Jewess or Christian woman). But the Muslim jurists strongly detest it where there is fear that the husband may incline to such wife so much that she may seduce him from his religion or he may ally himself with the people of her religion which is considered blasphemous (according to the Qur’anic

provision, 5:51). So the jurists, with a view to reducing the fear have stipulated certain conditions that must be fulfilled before embarking on such marriage. The scope of this paper will not allow me to explain these conditions.

On the other hand, it is absolutely not lawful for a Muslim woman to marry any non-Muslim even if he is a Kitabi, (i.e. a Jew or a Christian). All Muslim jurists unanimously agreed on this. In holding this view they rely on the following authorities.

a) Qur'an 60:10:

O you who believe! When believing women come to you as emigrant, examine them: Allah knows best as to their Faith, then if you ascertain that they are true believers, send them not back to the disbelievers. They are not lawful (wives) for the disbelievers, nor are the disbelievers lawful (husbands) for them¹¹⁸.

b) Qur'an 2:221:

And give not (your daughters) in marriage to al-Mushrikun (polytheists, pagans, idolators and disbelievers in oneness of Allah and His Messenger Muhammad (S.A.W.) till they believe¹¹⁹.

There are cogent reasons for this difference, the most important of which are:

a) Husband is responsible for maintaining his wife and protecting her religious belief, her honour and dignity and she is, on reciprocal basis, responsible of obeying him regarding what he instructs her, provided it is not contrary to the principles of the Shari'ah. This obedience is a sort of dominion over her. And it is not rightful Islamically for a non-believer to have dominion over a believer as Allah

(S.W.T.) says in the Qur'an 4:41.

- b) While Islam guarantees freedom of religion to Christian or Jewish wife of a Muslim other religions, including Judaism and Christianity, do not guarantee a Muslim wife, freedom of belief and practice, nor do they properly safeguard her rights (according to Islam). Since this is the case, Islam cannot take chance on the future of its daughters by giving them into the hands of the people who neither honour their religion nor are concerned to protect their rights. Sheikh Yusuf al-Qardawi extensively expounds this point in his book *al-Halal Wal-Haram Fil Islam*.¹²⁰

Besides these six areas, there are some other areas where men and women are differentiated for the reason explained previously. For instance, they are under the Shari'ah differentiated in the case holding position of leadership, judgeship (al-qada) general political activities, general leadership at home and in the society (al-qawamah) etc. Even though these areas have been made to be controversial and many people, even among the Muslims have been confused or even misled by not only the enemies of Islam, but even by some modernist Muslims for various motives, the scope of the paper may not permit me to explain them well. This is because, if I am to do that, the paper may turn out to be a small book¹²¹.

5) Children's Special Rights

Children, like women, have some special rights, granted to them by the Shari'ah, besides the general rights they have as human beings which have been briefly discussed at the beginning of this humble presentation. Following is a briefly discussion on the most important of these rights which will be preceded by a brief discussion on the importance of children in Islam.

6.1 Importance of Children

Children are given proper importance under the Shari'ah. They are thus not regarded as unnecessary burden but gift and bounties from Allah (S.W.T.), because this is what make the parents, give their children their worth and consequently be able to accord them sincere love, affection and take pains and sacrifice for them.

Children are also regarded as the best reward for their parents; the best helpers and the best heirs after death. They are also a continuous source of reward for the parents. There are many Qur'anic verses on all these, some of which are:

- a) Qur'an 18 : 46:

Wealth and children are the adornment of the life of this world. But the good righteous deed, that last, are better with your Lord for rewards and better in respect of hope¹²¹.

- b) Qur'an, 42 : 49-50

To Allah belongs the kingdom of the heavens and the earth. He creates what He wills. He bestows females (offspring) upon whom He wills and bestows male (offspring) upon whom He wills. Or bestows both males and females, and He renders barren whom He wills. Verily, He is All-Knower and is Able to do all things¹²².

- c) Abu Hurairah narrates the Prophet (S.A.W.) saying: When a person dies, his period of activity comes to an end except three virtuous deeds due to which he goes on getting the reward from Allah (S.W.T.) till eternity. These are: leaving behind, some virtuous deed which could continue even after his demise; the knowledge through which people may

benefit themselves; and virtuous child who should continue praying for him¹²³.

For all that has been said, parents, and in fact the society as a whole should play an active part and strive in the best way in giving children their rights. In fact, this is a religious duty as far as the *Shari'ah* is concerned.

6.2 The Rights

As everything to do with the rights of children may not satisfactorily be exhausted within the small scope of this paper, some of the most important of these rights may be summarized as follows:

6.2.1 Right to Paternity (Ancestry)

The *Shari'ah* has given a very high respect to the bonds of family and forbids any act that may cast doubt on the paternity of the child. In fact, ancestry (*nasb*) has been described in the Qur'an as a great sign of Allah's mighty, that is in 25 : 54.

And is He Who has created man from water, and has appointed for him kindred by blood, and kindred by marriage and your Lord is Ever All-Powerful (to do what He wills)¹²⁴.

Thus, hiding the identify of the natural parents of a child (which may lead to loss of his paternity is an act of the highest disrespect to the whole family, especially the child concerned. That is why Islam has categorically prohibited adoption of children as it is practiced in Western societies or societies that imitate them. This is in accordance with 33 : 5:

Call them (adopted sons) by the names of their fathers: That is more just with Allah. But if you know not their father's (names, call them) your

brothers in faith and Mawalikum (your freed slaves) ... ¹²⁵.

In a *hadith*, narrated by al-Bukhari the Prophet (S.A.W.) was reported to have said:

No man calls himself after someone other than his father, and he knows it, without having disbelieved in Allah, and the one who calls himself after a people with whom he has no (blood) relationship, let them take his place in the Fire (of Hell)¹²⁶.

Foster parenting is, on the other hand, permitted whenever there is need for that, provided there is clear understanding by all members of the family that the fostered child is the child of someone

6.2.2 Rights to Good Name

It is the special right of the child to be given good name, either on the very day of its birth or on the seventh day. It was narrated by *As'habus-Sunan* on the authority of Samurrah that the Prophet (S.A.W) said, "Every child is bound to have aqiqah (the ram for naming a baby) to be slaughtered for him and is given a name, and his head shaved (all) on his seventh day."¹²⁷

It was also narrated on the authority of Anas that the Prophet (S.A.W) was reported to have said, "A boy has been born for me tonight and I named him after my ancestor Ibrahim."¹²⁸

It was narrated by Abud Darda that the Prophet (S.A.W) said, "You will be called on the Doomsday by your names and your fathers' names, so choose nice names."¹²⁹

6.2.3 Rights to Suckling

It is the right of the child to be suckled by its mother for the prescribed period of suckling. This is in accordance with the Quranic verse 2:233.

Mothers shall give suck to their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling,...¹³⁰

6.2.4 Rights to Maintenance

This means bearing all the expenses of a child from his birth till adulthood, by the father. This maintenance includes the expenses in the birth (since pregnancy), feeding, clothing, education, healthcare and any other thing relating to each and every aspect of cherishment of the child.

This responsibility on the father is not unnecessary burden but meritorious act for which he is rewarded by the Creator.

Abu Mas'ud Al-Badri reported that in fact this is the most rewarding expenditure. Thus it was reported, on the authority of Abu Hurairah that the Prophet (S.A.W) said:

If you spend your Dinar in the way of Allah (fi sabilil-lah), one to free a slave, one as charity to the poor and one on your family and children, then out of all these four Dinars, the most rewarding one is that which you spent on your family and children.¹³¹

In another hadith narrated on the authority of Abu Hurairah, the Prophet (S.A.W) was reported to have said:

The person who earned lawfully to save himself from begging and to provide for the sustenance of his family and to help his neighbour, will meet Almighty Allah on the day of judgment with the face shining like full moon. And the one who earned unlawfully with a view to get more well off than before and to show off his financial superiority over others will meet Allah in extreme anger.

Sustenance and Treatment of Daughters: Special place has been given to the sustenance of daughters and described as more rewarding. Thus in a hadith narrated on the authority of Anas (R.A), the Prophet (S.A.W) was reported to have said:

“One who cherished two daughters till they become of age (and married them off) will be so near with me on the last day, like these two fingers and then he showed the two fingers joining them together.”¹¹³

In another hadith narrated on the authority of Jabir ibn Abdullah, the Prophet (S.A.W) was reported to have said:

“One who has three daughters and guards them, caters for their needs and remains kind towards them will surely get to Heaven.” Someone asked him about one who has only two daughters. The Prophet (S.A.W) said, “Even then.”¹¹⁴

In fact warding a destitute daughter, who has returned to her parents after divorce, separation or being a widow or who remains unmarried due to some physical or mental handicap has been described as the best charity by the Prophet (S.A.W). That is in a hadith narrated by Ibn Majah in which the Prophet (S.A.W) was reported to have said, “Shall I tell you the best charity? It is the daughter, returned to you and there is none else to take care of her except you.”¹³⁵

In yet another hadith equal treatment with sons and daughters has been made to be one of the conditions for entry into the paradise. Thus, Ibn Abbas relates that the Messenger of Allah said:

The person who got a daughter and did not burry her alive neither degraded her nor give preference to the sons against her, Almighty Allah would enter him into the Heaven.¹³⁶

While maintaining children is considered as one of the most rewarding acts, by the Shariah, avoidance or even negligence of it is

considered a serious sin. The Prophet (S.A.W) was reported to have said, “It is quite sufficient to make one a sinner that he is neglecting his dependent.”¹³⁷

6.2.5 Rights to Mercy, Kindness and Affection

It is the right of children (and duty of their parents) to be treated with and shown mercy, kindness and affection. This is even naturally expected. There are many ahadith to this effect. Thus it was reported that once the Prophet (S.A.W) kissed his grandson al-Hasan (R.A) while Arqa ibn al-Habis was sitting beside him. At that, al-Arqa said, “I have ten children and I have never kissed any of them.” The Prophet (S.A.W) looked at him and said, “The one who is not merciful will not be shown mercy.”¹³⁸ There are many other ahadith to this effect.

6.2.6 Right to Education and Training

Taking care of the physical needs of the child is very crucial but that is meaningless if he is not well educated and trained. The physical growth of child is a natural process while his mental and behavioural patterns are purely the social process. Thus it is his right to be educated and trained in the befitting manner so that he may become a good muslim, civilized, cultured, noble, gentle, law-abiding and responsible citizen and important unit of society in the future. It is regarding that the Prophet (S.A.W) was reported to have said, “A father gives his child nothing better than a good education.”¹³⁹

Since acquiring knowledge generally involves expenses, fathers are reminded of their obligation to educate their children. However, even though mothers are not specifically addressed (like fathers), they are often the major force in carrying out this responsibility.

6.2.7 Some Controversial Issues

There are some issues concerning the rights of children that are regarded as controversial for one reason or the other. These include

inflicting physical punishment on children, female circumcision and early or what they call child marriage. I will not discuss the controversy for fear that the paper may be too lengthy. I will just give very brief explanation of some of these issues and their position under the Shariah.

6.3.1 On Physical Punishment

It has been reported in a hadith narrated by Muslim that the Prophet (S.A.W) never struck anyone with his hand, neither a woman nor a servant. However, he was also reported to have given the following instruction:

Order your children to pray when they become seven years old, and spank them for it when they become ten years old...¹⁴⁰

Moreover, Mu'adh ibn Jabal (R.A) reported that the Prophet (S.A.W) ordered him to do ten things; the ninth and tenth among them were:

Do not refrain from using pressure (on your children) with a view to training them. Inculcate in them the fear of Allah.¹⁴¹

Physical punishment is, therefore, not prohibited by the Shari'ah. Rather the necessity of it under certain conditions is recognized and upheld. And there are no ahadith specifying or defining it with the exception of those, dealing with prayer (salat). However, Muslim scholars have derived some guidelines to that effect from various ahadith, which include the following:-

- (i) Do not hit the face, head or tender parts of the body;
- (ii) Do not hit hard enough to leave a mark on the skin;
- (iii) Do not spank when you feel you might lose control.¹⁴²

6.3.2 On Early Marriage

Islam encourages early marriage for the protection and

preservation of chastity without unnecessary delay, because such delay often causes shameful situation even to the parents, particularly where the person involved is a female. According to a hadith, the Prophet (S.A.W) said:

One who is bestowed with children by Almighty Allah, he should give them good names, give them good education and training and get them married when they gain adulthood. In case they are not married and digress from the path of virtue the father will be held responsible for that.¹⁴³

The Prophet (S.A.W) in one of his ahadith indicates that the reason for the encouragement of marriage as soon one gets the opportunity to do so is the fear that the eye might not be corrupted. In the hadith, he was reported to have said:

O the assembly of young men! Whoever among you has the means, let him get married, for it will avert the eyes and assure more relief and virtuousness; and who does not, let him fast, for fasting, to him is (a form of) castration (wija').¹⁴⁴

Muhammad Qutb, in his book al-Insan Baina al-Maddiyyah Wal-Islam under a chapter titled, "al-Mushkilatul-Jinsiyyah (sexual problem) extensively discusses the advantage of early marriage in solving sexual problems.¹⁴⁵

6.3.3 On Circumcision

Majority of the Muslim jurists, according to as-Sayyid Sabiq, are of the view that circumcision, is wajib (obligatory) in the case of male.¹⁴⁶

Though there is no single Quranic verse on circumcision, there are many ahadith on it, but the more authentic is the one in which the Prophet (S.A.W) was reported to have passed a woman performing

circumcision on a young girl and he instructed the woman by saying:

Cut off only the foreskin (outer fold of skin over clitoris; the prepuce) but do not cut off deeply (i.e. clitoris itself), for this is brighter for the face (of the girl) and more favourable with the husband.¹⁴⁷

However, female circumcision which falls within the category of Mubah (permissible) should be distinguished from genital mutilation which is the removal of the entire clitoris with part of labia minora and which is haram (prohibited). That may be the reason why it is called pharaonic procedure.

CONCLUSION

This paper focuses on the ideals relating the rights of women and children. And equality of sexes from the point of view of the Shari'ah has been briefly discussed to show how Islam regards man and woman as equal partners in this life even though they are different.

There is no denying the fact that these rights accorded by the Shari'ah to women and children are more often violated for various reasons but the only solution to this problem is returning to Islam, and not borrowing some ideals from people who have not solved their own problem, to solve our own. Islam has provided various and unique safeguards for the protection of not only women's and children's rights but human rights as a whole.

These safeguards include the inculcation of the sense of accountability for the violation of Allah's limits including those in respect of women's and children's rights.

Another safeguard is educating the people regarding the rights which is the basis of other safeguards. This is because even where there are provisions in law, regarding the rights, they may be operative if the people are ignorant of them.

Another very important safeguard is the duty of promoting good

virtues and prohibiting and fighting vices. (al-Amr bil Ma'ruf wan Nahyu 'anil Munkar), which makes every Muslim vigilant on anyone who violates the limits of Allah even if it is the state. This is in accordance with the hadith which relates fighting evils to one's iman (faith). In the hadith the Prophet (S.A.W) was reported to have given the instruction as follows:

Whoever, of you sees evil should change it with his hand; and if it is not possible then with his tongue; but if this is not possible then with his heart. But this is the weakest form of iman (faith).¹⁴⁸

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- (82) Narrated by Ahmad, Abu Dawud, Bayhaqi and al-Hakim on the authority of Abdullahi ibn Umar, quoted in Aliyu, A.A. (1996), Termination of Marriage and its Legal Consequences under Islamic Law (unpublished Ph.D. Thesis), p. 351.
- (83) For the full story in the Quran, refer to 3:35-37.
- (84) Transmitted by al-Hakim and quoted in Qardawi, Y. (1998), infra at pp. 71-72.
- (85) Narrated by al-Bukhari and Muslim and quoted in Sabiq, S. (1977), Fiqhus-Sunnah, ibid.
- (86) Narrated on the authority of A'ishah, collected in Ibnu Asakir (1410AH), Silsilatu Kunuzis-Sunnah, al-Jami'us-Saghir, 1st ed., and quoted in Badawi, J. (2004), Gender Equity in Islam, Soltan Publishing Co., IMC, U.S.A., p. 30.
- (87) For the detailed exposition of this see Aliyu, I.A. (1988), Legal Basis and Objectives of Marriage under Islamic Law, (Unpublished LL.M. Thesis), pp. 334-343.
- (88) For details on this, see Sabiq, S. (1977), Fiqhus-Sunnah, infra at pp. 162-164.
- (89) See for example, 3:35, 51:49, and 53:45.
- (90) See Abuzayd, B.A. (2000), Hirasatul-Fadilah, 1st ed., p. 21.
- (91) See Sabiq, S. (1977), Fiqhus-Sunnah, Darul Fikr, vol. 3, p. 340.

- (92) Khamenei, S.M. (1987), Human Rights of Women in Islam and in other Laws (a paper presented at the fifth International Islamic Thought Conference in Tehran, Iran, 29th – 31st January, 1987), p. 332.
- (93) Where a husband accuses his wife directly or indirectly, of committing zina, by denying the paternity of the child born of her during the subsistence of their marriage, it has been prescribed by the Shariah that the spouses should recourse to li'an, as it has been provided by the Quranic verses 24:6-8 and some ahadith. For details on this see Aliyu, I.A. (1996), Termination of Marriage and its Legal Consequences under Islamic law, at pp. 253-274.
- (94) al-Qardawi, Y. (1998), Markazul Mar'ah.. supra at p. 18.
- (95) al-Hilali and Khan, *infra* at p. 66.
- (96) Sabiq, S. (1977), Fiqhus-Sunnah, *infra* at p. 465.
- (97) Oudah, A.Q. (2005), Criminal Law of Islam, Nusrat Ali Nasri for Kitab Bhavan, New Delhi, India, vol. 3, p. 67.
- (98) ar-Razi, F. (1938), at-Tafsirul-Kabir, al-Bahiyyah Printing Press, Egypt, vol. 9, p. 233.
- (99) al-Hilali and Khan, *infra* at p. 123.
- (100) Shaltut, M. (1977), al-Islam 'Aqidah wa Shari'ah, Darus-Shuruq, Cairo and Beirut (9th ed.), pp. 208-209.
- (101) See the hadith and the detailed explanation on it in Shawkani, M.A. (n.d.), Naylul Awtar, Darul Jil, Beirut, vol. 7, pp. 224-227.
- (102) al-Qardawi, Y. (1998), Markazul Mar'ah... *infra* at pp. 26-27.
- (103) Sabiq, S. (1977), Fiqhus Sunnah, *infra* at p. 470.
- (104) Khamenei, S.M. (1987), Human Rights of Women in Islam... *infra* at p. 335.
- (105) Aliyu, I.A. (1996), Termination of Marriage... supra at pp. 23-24.
- (106) Aliyu, I.A. (1996), Termination of Marriage... supra at pp. 24.
- (107) Quoted in Maududi, A.A. (1983), Law of Marriage and Divorce in Islam, Islamic Books Publishers, Kuwait.
- (108) Khamenei, S.M. (1987), Human Rights of Women in Islam and in

- Other Laws, *infra* at pp. 342-343.
- (109)Phillips, A.A. and Jones, J. (n.d.), Polygamy in Islam, S.A. Al-Aminu Publications, Somolu, p. 38.
- (110)Quran 30:30.
- (111)al-Hilali and Khan, *infra* at p. 105.
- (112)Abd al Ali, H. (1977), Family Structure in Islam, American Trust Publications, p. 118.
- (113)Narrated by Abu Dawud, Tirmidhi, Nisa'i and Ibn Majah on the authority of Abu Hurairah.
- (114)al-Hilali and Khan, *infra* at p. 130.
- (115)Narrated by Abu Dawud, Tirmidhi, Nisa'i and Ibn Majah.
- (116)al-Hilali and Khan, *infra* at pp. 364-365.
- (117)Ibid at p. 759.
- (118)Ibid at p. 47.
- (119)Qardawi, Y. (1989), Lawful and Prohibited in Islam (Al Halal Wal-Haram Fil Islam) Al-Tawheed Publishing Company, Lagos Nigeria, p. 54.
- (120)A book titled "Protection of Women's Rights Under the Shariah" has recently been written by the presenter of this paper (which will soon go to the press) and which consists of extensive exposition of most of those controversial issues.
- (121)al-Hilali and Khan, *supra* at p. 392.
- (122)Ibid at p. 662.
- (123)Narrated by Muslim.
- (124)al-Hilali and Khan, *infra* at p. 485.
- (125)ibid at p. 561.
- (126)Narrated by al-Bukhari (4:711) and quoted in Tarari, N. (1995), The Child in Islam, American Trust Publication, U.S.A., p. 81.
- (127)Quoted in Ulwan, A.N. (2001), Child Education in Islam (Tarbiyyatul Awlad Fil Islam) – translated. Dar El-Salam, for printing, publication and translation, Cairo, Egypt, p. 31.
- (128)Narrated by Muslim and quoted in Ulwan (2001), Child Education

- in Islam, op cit at p. 31.
- (129) Narrated by Abu Dawud, *ibid*, at p. 31.
- (130) al-Hilali and Khan, *supra* at p. 51.
- (131) Narrated by Muslim and quoted in Hussain, A. (n.d.), Muslim Parents: Their Rights and Duties, Adam Publishers and Distributors, New Delhi, India, p. 113.
- (132) Narrated by al-Baihaqi and quoted in Husain, A. (n.d.), Muslim Parents... *infra* at p. 114.
- (133) *ibid* at p. 117.
- (134) Narrated by (al-Bukhari) in his Al-Adab al-Mufrad and quoted in Husain (n.d.) Muslim Parents... *infra* at pp. 118-119.
- (135) *Ibid* at p. 119.
- (136) Narrated by Abu Dawud, and quoted in Husain, A. (n.d.), Muslim Parents... *infra* at p. 130.
- (137) Narrated by Abu Dawud and quoted in Husain (n.d.) op cit at p. 113.
- (138) Narrated by al-Bukhari and quoted in Tarazi, (1995), The Child in Islam, *supra* at p. 77.
- (139) Narrated by Tirmidhi and Baihaqi in Mishkat, and quoted in Tarari (1995), *supra* at p. 75.
- (140) Narrated by Abu Dawud and quoted in Tarazi (1995), *infra* at p. 195.
- (141) Narrated by Ahmad and quoted in Tarazi (1995), op cit at pp. 195-196.
- (142) *Ibid*.
- (143) Narrated by al-Baihaqi and quoted in Husain, A. (n.d.), Muslim Parents..., *infra* at p. 175.
- (144) It was narrated by the group of narrators, al-Jama'ah (including al-Bukhari and Muslim) on the authority of Ibn Mas'ud.
- (145) See Qutb, M. (1978), al-Insan bainal Maddiyyah Wal-Islam, Darush-Shuruq, pp. 165-214.
- (146) Sabiq, S. (1977), Fiqhus-Sunnah, *supra* vol. I, p. 33.

(147) Narrated by at-Tabarani and quoted in al-Bani, M.N. (1983), Silsilatul Ahadithus Sahihah, al-Maktabul-Islami, Beirut, Lebanon, vol. 2, pp. 353-358, Hadith No. 722.

(148) Narrated by Muslim on the authority of Abu Sa'id al-Khudri.